

Mario R. Nicholas (SB #273122)  
[mario.nicholas@stoel.com](mailto:mario.nicholas@stoel.com)  
Stoel Rives LLP  
760 SW Ninth Avenue, Suite 3000  
Portland, OR 97205  
Telephone: 503.294.9510  
Facsimile: 503.220.2480

*Attorneys for Plaintiff JH Kelly, LLC*

Henry A. Wirta, Jr. (SB #110097)  
[hwirta@hfdclaw.com](mailto:hwirta@hfdclaw.com)  
Harrington Foxx Dubrow & Canter, LLP  
601 Montgomery Street, Suite 800  
San Francisco, CA 94111  
Telephone: (415) 288-6600  
Facsimile: (415) 288-6618

*Attorneys for Ed Staub & Sons Petroleum, Inc.*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

JH KELLY, LLC,  
Plaintiff,

v.

ED STAUB & SONS PETROLEUM, INC.,  
Defendant.

Case No. 2:20-cv-02008

STIPULATION TO TRANSFER  
PURSUANT TO 28 U.S.C. § 1404(a);  
ORDER

Plaintiff JH Kelly, LLC (“**JHK**”) and Defendant Ed Staub & Sons Petroleum, Inc.  
 (“**Staub**” and, together with JHK, the “**Parties**”), by and through their above-referenced attorneys  
of record, hereby stipulate and agree as follows:

**INTRODUCTION**

In the present action, JHK, a subcontractor, asserts claims against Staub, a supplier for,  
among other things, equitable indemnity, declaratory relief (based on the theory of equitable  
indemnity), and contribution, in response to claims asserted by AECOM Technical Services, Inc.

1 (“**AECOM**”), the prime contractor, against JHK in a separate lawsuit currently pending in the  
 2 United States District Court for the Northern District of California (the “**Northern District**  
 3 **Court**”). By this Stipulation, the Parties seek to transfer this action to the Northern District Court  
 4 where the underlying claims, and related claims regarding the construction project at issue, are  
 5 pending, pursuant to 28 U.S.C. § 1404(a). Following transfer, and subject to court approval, the  
 6 Parties intend to seek to consolidate this action with the related action pending in the Northern  
 7 District Court.

### 8 **RECITALS**

9 1. JHK was a subcontractor on a private construction project generally known as the  
 10 “Burney K2 Replacement Project” (the “**Project**”) on property (the “**Property**”) owned by  
 11 Pacific Gas and Electric Company (“**PG&E**”). AECOM was the prime contractor that engaged  
 12 JHK as a subcontractor on the Project. JHK engaged Staub as a supplier on the Project.

13 2. On or about January 29, 2019, JHK filed a complaint against AECOM in the  
 14 Superior Court of California, County of Shasta (the “**State Court**”), entitled *JH Kelly, LLC v.*  
 15 *AECOM Technical Services, Inc., et al.*, Case No. 19CVO172 (the “**AECOM Action**”), in which  
 16 JHK asserts a claim in connection with the Project.

17 3. On or about June 28, 2019, AECOM filed a cross-complaint (the “**Cross-**  
 18 **Complaint**”) against JHK in the AECOM Action, in which AECOM asserts various cross-claims  
 19 in connection with the Project. Among AECOM’s cross-claims, AECOM alleges that it incurred  
 20 damages as a result of the “Valve Strike” incident involving Staub and JHK, as follows: “On or  
 21 about October 14, 2017, a fuel truck operated by [Staub,] a supplier of JH Kelly and for which JH  
 22 Kelly was responsible, negligently struck a pressurized valve at the site” (the “**Valve Strike**”).  
 23 AECOM alleges that it incurred damages of \$805,406.71 as a result of the Valve Strike incident.  
 24 The parties have a factual dispute as to the amount of damages that are attributable to the “Valve  
 25 Strike.”

26 4. Following a number of procedural events related to the AECOM Action not  
 27 involving Staub as a party, and to which Staub does not attest to have personal knowledge, (i) the  
 28 AECOM Action was consolidated with a separate lawsuit filed by JHK against PG&E related to

1 the Project in the State Court (the “**Consolidated State Action**”), (ii) the Consolidated State  
 2 Action was removed by PG&E (the “**Removed State Action**”) to the United States Bankruptcy  
 3 Court for the Eastern District of California (the “**Eastern District Bankruptcy Court**”), and (iii)  
 4 the Removed State Action was transferred from the Eastern District Bankruptcy Court to the  
 5 United States Bankruptcy Court for the Northern District Bankruptcy Court (the “**Northern**  
 6 **District Bankruptcy Court**”)—where the various claims asserted by JHK and AECOM related  
 7 to the Project and the Property are currently pending in a Consolidated Adversary Proceeding,  
 8 with Case No. 20-03019 (DM) as the lead case (the “**Consolidated Adversary Proceeding**”).

9 5. On or about July 28, 2020, the parties to the Consolidated Adversary Proceeding  
 10 filed a *Joint Motion for Permissive Withdrawal of the Reference* (the “**Stipulated Motion for**  
 11 **Withdrawal of the Reference**”) pursuant to which PG&E, JHK and AECOM jointly requested  
 12 that the Northern District Court withdraw the reference of the Consolidated Adversary  
 13 Proceeding from the Northern District Bankruptcy Court. The Stipulated Motion for Withdrawal  
 14 of the Reference is pending in the Northern District Court, Case No. 20-05381 (HSG), and a  
 15 hearing date is scheduled for the Stipulated Motion for Withdrawal of the Reference on  
 16 December 10, 2020 (Case No. 20-05381 (HSG); Dkt. No. 2, as modified).

17 6. On or about October 7, 2020, JHK filed a complaint against Staub in this Court, in  
 18 which JHK asserts various claims against Staub related to the Valve Strike incident.

19 7. On or about November 10, 2020, JHK filed a first amended complaint against  
 20 Staub in this Court (the “**First Amended Complaint**”), in which JHK asserts the following  
 21 claims against Staub related to the Valve Strike incident: negligence, equitable indemnity,  
 22 declaratory relief, and contribution.

23 8. The Parties agree, subject to court approval, that this action should be transferred  
 24 to the Northern District Court pursuant to 28 U.S.C. § 1404(a), which provides:

25 For the convenience of parties and witnesses, in the interest of  
 26 justice, a district court may transfer any civil action to any other  
 27 district or division where it might have been brought or to any  
 28 district or division to which all parties have consented.

9. The Parties consent to transfer to the Northern District Court. The Parties also agree that the convenience of the parties and witnesses to this action warrant transfer because the underlying claims asserted by AECOM related to the Valve Strike incident, and other related claims regarding the Project, are pending in a single, consolidated action in the Northern District Court. Following transfer, and subject to court approval, the Parties intend to seek to consolidate this action with the related action pending in the Northern District Court.

### **STIPULATION**

NOW THEREFORE, based on and subject to the foregoing, the Parties stipulate and agree, subject to court approval, that:

1. This action should be transferred from this Court to the United States District Court for the Northern District of California, pursuant to 28 U.S.C. § 1404(a).

### **SO STIPULATED.**

STOEL RIVES LLP

By: /s/  
MARIO R. NICHOLAS (SB #273122)  
[mario.nicholas@stoel.com](mailto:mario.nicholas@stoel.com)

Attorneys for Plaintiff  
JH KELLY, LLC

HARRINGTON FOXX DUBROW & CANTER, LLP

By: /s/  
HENRY A. WIRTA, JR. (SB #110097)  
[hwirta@hfdclaw.com](mailto:hwirta@hfdclaw.com)


Attorneys for Defendant  
ED STAUB & SONS PETROLEUM, INC.

**ORDER**

**IT IS SO ORDERED,**

The present case is transferred to the United States District Court for the Northern District of California, pursuant to 28 U.S.C. § 1404(a).

Dated: November 25, 2020



**WILLIAM B. SHUBB**

**UNITED STATES DISTRICT JUDGE**

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing STIPULATION TO TRANSFER AND PROPOSED ORDER on the following named person(s) on the date indicated below by:

- ☒ mailing with postage prepaid
- ☐ hand delivery
- ☐ facsimile transmission
- ☐ overnight delivery
- ☒ email
- ☐ notice of electronic filing using the Cm/ECF system

to said person(s) a true copy thereof, contained in a sealed envelope, addressed to said person(s) at his or her last-known address(es) indicated below.

Henry A. Wirta, Jr.  
Harrington Foxx Dubrow & Canter, LLP  
601 Montgomery Street, Suite 800  
San Francisco, CA 94111  
[hwirta@hfdclaw.com](mailto:hwirta@hfdclaw.com)

Attorneys for Ed Staub & Sons Petroleum, Inc.

DATED: November 25, 2020.

STOEL RIVES LLP

By: s/ Mario R. Nicholas  
MARIO R. NICHOLAS (SB #273122)  
[mario.nicholas@stoel.com](mailto:mario.nicholas@stoel.com)

Attorneys for Plaintiff  
JH KELLY, LLC